IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 8711 of 2006(K)

PETITIONER:

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1. SMT.BEEFATHIMA, W/O. ABOOBACKER,
   BEETIYADKA HOUSE, NEKRAJE VILLAGE & POST,
   KASARAGOD.

2. ABOOBACKER, BEETIYADKA HOUSE,
   NEKRAJE VILLAGE & POST, KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENTS:

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1. THE TAHSILDAR,
   REVENUE RECOVERY, KASARAGOD.

2. THE SUB COLLECTOR, REVENUE DIVISION
   OFFICE, KASARAGOD.

BY ADV. SHRI.P.N.SANTHOSH, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) No. 8711/2006

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE APPEAL.

P2 : COPY OF THE DEMAND NOTICE.

P3 : COPY OF THE CERTIFICATE ISSUED BY THE PANCHAYAT.

// TRUE COPY //

PA TO JUDGE.

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C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 8711 of 2006

Dated, this the 12th day of September, 2007

J U D G M E N T

Heard learned counsel for petitioners and learned Government Pleader. The residential building constructed by petitioners is of the plinth area admittedly above the limit that attracts luxury tax. However, petitioners have relied on a Certificate issued by the Panchayat that the building was numbered in the year 1999 and based on that they have put for the case that construction of the building was completed prior to 01/04/1999 and therefore there is no liability for luxury tax under Section 5A of the Building Tax Act. However, it is seen from the counter affidavit that petitioners themselves admitted in the return filed after completion of the construction of the building that the construction was completed in April 2000. I do not think there is any scope for adjudication in a case where demand is raised based on admission by the petitioners. It is quite common that buildings are numbered by the Punchayat for the purpose of getting electricity connection, water connection etc. even before completion of construction of building. Even if building is numbered in the year 1999, its completion of

construction which according to the petitioners was only in April 2000 that attracts tax under the Building Tax Act. Therefore, petitioners obviously are liable for payment of building tax and luxury tax. However, the demand of luxury tax for the year 1999-2000 is not tenable because construction of building was completed, even according to the petitioners which is accepted by the 1st respondent, in April 2000. In the circumstances, this writ petition is disposed of declaring petitioners' liability for luxury tax only from 2000-01 onwards with direction to the 1st respondent to recover the tax accordingly. Petitioners are granted three equal monthly instalments to clear the arrears, first of which will be paid on or before last date of September, 2007 and balance two instalments on or before last date of two succeeding months.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

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